

## § 1.750

be extended under the provisions of § 1.136.

[52 FR 9394, Mar. 24, 1987, as amended at 59 FR 54503, Oct. 22, 1993; 61 FR 64028, Dec. 3, 1996; 65 FR 54680, Sept. 8, 2000]

### **§ 1.750 Determination of eligibility for extension of patent term.**

A determination as to whether a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the application for extension filed in compliance with § 1.740 or § 1.790. This determination may be delegated to appropriate Patent and Trademark Office officials and may be made at any time before the certificate of extension is issued. The Commissioner or other appropriate officials may require from applicant further information or make such independent inquiries as desired before a final determination is made on whether a patent is eligible for extension. In an application for extension filed in compliance with § 1.740, a notice will be mailed to applicant containing the determination as to the eligibility of the patent for extension and the period of time of the extension, if any. This notice shall constitute the final determination as to the eligibility and any period of extension of the patent. A single request for reconsideration of a final determination may be made if filed by the applicant within such time as may be set in the notice of final determination or, if no time is set, within one month from the date of the final determination. The time periods set forth herein are subject to the provisions of § 1.136.

[60 FR 25618, May 12, 1995]

### **§ 1.760 Interim extension of patent term under 35 U.S.C. 156(e)(2).**

An applicant who has filed a formal application for extension in compliance with § 1.740 may request one or more interim extensions for periods of up to one year each pending a final determination on the application pursuant to § 1.750. Any such request should be filed at least three months prior to the expiration date of the patent. The Commissioner may issue interim extensions, without a request by the applicant, for periods of up to one year each until a final determination is

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made. The patent owner or agent will be notified when an interim extension is granted and notice of the extension will be published in the *Official Gazette of the United States Patent and Trademark Office*. The notice will be recorded in the official file of the patent and will be considered as part of the original patent. In no event will the interim extensions granted under this section be longer than the maximum period for extension to which the applicant would be eligible.

[65 FR 54680, Sept. 8, 2000]

### **§ 1.765 Duty of disclosure in patent term extension proceedings.**

(a) A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture rests on the patent owner or its agent, on each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding. All such individuals who are aware, or become aware, of material information adverse to a determination of entitlement to the extension sought, which has not been previously made of record in the patent term extension proceeding must bring such information to the attention of the Office or the Secretary, as appropriate, in accordance with paragraph (b) of this section, as soon as it is practical to do so after the individual becomes aware of the information. Information is material where there is a substantial likelihood that the Office or the Secretary would consider it important in determinations to be made in the patent term extension proceeding.

(b) Disclosures pursuant to this section must be accompanied by a copy of each written document which is being disclosed. The disclosure must be made to the Office or the Secretary, as appropriate, unless the disclosure is material to determinations to be made by both the Office and the Secretary, in which case duplicate copies, certified as such, must be filed in the Office and with the Secretary. Disclosures pursuant to this section may be made to the Office or the Secretary, as appropriate,